

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
*Richmond Division*

TERRY S. EVERSOLE,

Plaintiff,

vs.

Civil Action No. 3:11CV00428

FORD MOTOR COMPANY and  
CATERPILLAR INC.,

Defendants.

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**DEFENDANT CATERPILLAR INC.'S**  
**MOTION FOR SUMMARY JUDGMENT**

Defendant Caterpillar Inc., by its undersigned counsel and pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rules 7 and 56, moves for final summary judgment in its favor on the ground that the truck at issue is not a “consumer product” as defined in the Magnuson-Moss Warranty Act.

Specifically, Plaintiff sues Defendant Caterpillar under the Magnuson-Moss Warranty Act for breach of implied and express warranties stemming from Ford Motor Company’s (“Ford”) sale of a truck to Plaintiff which contained a Caterpillar C7 engine. The Act requires that the sale in question relate to a “consumer product” which is determined by the product’s common, ordinary or usual use and focuses on the class-wide use of the product. The use to which the consumer puts the product is *not* determinative. In this case, Plaintiff admitted during deposition that the truck is “normally a type of truck that would be used in the tow business.” In fact, Plaintiff installed a flat-bed on the truck to use it eventually in his towing business. The Ford

website describes the truck as a “work” or “commercial” truck and markets it as such.

The demonstrative uses for the truck displayed on Ford’s website are all commercial uses (e.g., cherry picker, dump truck, flat-bed tow truck).

Based on the foregoing, the truck cannot be considered a “consumer product.” Additional legal and factual grounds supporting this motion are set forth in Caterpillar’s Memorandum in Support of Motion for Summary Judgment, filed with this Motion.

WHEREFORE, Defendant Caterpillar Inc. requests that this Court enter summary judgment in its favor.

CATERPILLAR INC.

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**CERTIFICATE**

I hereby certify that on February 17, 2012, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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